

# **OVERVIEW OF LIABILITY PROTECTION LAWS FOR VOLUNTEERS**

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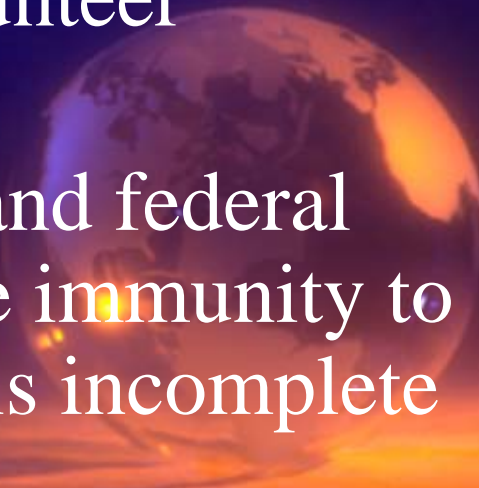
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# OVERVIEW

- Several volunteer initiatives currently underway in Virginia related to EP & R
  - Concern has been expressed about legal liability of volunteers and volunteer organizations
  - There are numerous Virginia and federal statutes that attempt to provide immunity to volunteers, but the protection is incomplete
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# Volunteer Protection Laws


- Va. Code Ann. § § 8.01-225 et seq.
  - The “Good Samaritan Act”
- Charitable Immunity
- 42 U.S.C. § § 14501 et seq.
  - The “Federal Volunteer Protection Act”
- Sovereign Immunity
- Va. Code Ann. § § 44-146.13 et seq.
  - “Title 44”
- Workers Compensation



# The Good Samaritan Act

- Applies in narrow and specific instances
- Broadest immunity is for those who provide emergency care at the scene of an accident to someone who is injured
- Immunizes providers when a patient suffers injuries because a health care provider abandoned him in order to respond to a man-made disaster and a state or local emergency has been declared or is subsequently declared.

# Good Samaritan Immunity Does NOT Apply To...

- Volunteers who render aid off-site from the emergency
  - Volunteers who render aid to non-injured, healthy individuals
  - Volunteers who otherwise give their time at free clinics
  - Volunteers who render aid in situations other than those specifically mentioned in the Act
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# Charitable Immunity

“The doctrine of charitable immunity adopted in Virginia precludes a charity’s beneficiaries from recovering damages from the charity for the negligent acts of its servants or agents if due care was exercised in the hiring and retention of those agents and servants.”

*Moore v. Warren*, 250 Va. 421, 422-23 (1995) citing *Straley v. Urbanna Chamber of Commerce*, 243 Va. 32, 35 (1992).

# Charitable Immunity

## Protection for the Charity

- Charitable immunity applies to organizations, but extends to its volunteers
  - Only one case on point in the Virginia Supreme Court, but there was a dissent
- To be protected, the organization must NOT be “maintained for gain, profit or advantage”

# Charitable Immunity

## Protection for the Charity

- Courts will look at an organization's charter to determine whether it is maintained for “gain, profit or advantage”
  - This makes the Articles of Incorporation very important
  - They need to state clearly that the organization is operated for charitable purposes only
  - “Fill in the blank” forms, even from VA SCC, are probably not sufficient
- 501(c)(3) status is NOT determinative



# Charitable Immunity

- It does NOT immunize against negligent “hiring and retention” of volunteers
  - Must exercise reasonable care in selection and supervision of volunteers



# Charitable Immunity

## The Bottom Line...

### CHARITABLE IMMUNITY IS NOT SUFFICIENT PROTECTION

- It is limited in scope and application
- Protection depends on a court's findings

# Federal Volunteer Protection Act

## Overview

- Protection for volunteers of “nonprofit” or “governmental” entities
- Volunteers of these entities cannot be sued by injured beneficiaries for economic damages
- Volunteers can be sued for non-economic damages
- Does not shield the volunteer organization from suit

# The Volunteer Protection Act

## The Details for Entities

- Two types of “nonprofit organizations”
  - 501(c)(3)
- AND
- “Any not-for-profit organization which is organized and conducted for public benefit and operated primarily for ... health purposes”
- MRCs may be nonprofit organizations under this definition
- “Governmental entities” are not defined

# The Volunteer Protection Act

## The Details for Volunteers

- Volunteers are only immune from liability for economic damages when they are acting “within the scope” of their responsibilities to the entity
- For MRC volunteers, the scope of their duties must be clearly defined and they must only provide services within this scope



# The Volunteer Protection Act

## The Details for Volunteers

- To obtain immunity from economic damages, volunteers must be licensed, certified or authorized to perform those acts that require such authorization
- MRC volunteers who are providing medical services must be licensed to do so and may not provide services outside the scope of such license

# The Volunteer Protection Act

## The First Loophole

Volunteers remain liable for non-economic damages:

- Physical and emotional pain and suffering
- Inconvenience
- Physical impairment
- Mental anguish
- Disfigurement
- Loss of enjoyment of life



# The Volunteer Protection Act

## The First Loophole

Volunteers remain liable for non-economic damages:

- Loss of society and companionship
- Loss of consortium
- Hedonic damages
- Injury to reputation
- All other nonpecuniary losses of any kind or nature



# The Volunteer Protection Act

## The Second Loophole

- Volunteers remain liable to the entity
  - The entity remains liable to injured beneficiaries
  - Therefore, volunteers remain indirectly liable to injured beneficiaries
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# The Volunteer Protection Act

## The Bottom Line

THE VOLUNTEER PROTECTION ACT  
DOES NOT PROVIDE FULL AND  
COMPLETE IMMUNITY FOR  
VOLUNTEERS





# Sovereign Immunity Overview

- Statutory Sovereign Immunity
  - Va. Code Ann. § 2.2-3605
    - “Virginia State Government Volunteer Act”
  - Va. Code Ann. § 27.23.6
    - “Contractual” Sovereign Immunity
- Common Law Sovereign Immunity



# Statutory Sovereign Immunity

## Virginia Volunteers Act

- Provides sovereign immunity for volunteers in state and local service
- Covers “regular-service” and “occasional-service” volunteers
  - Registered MRC volunteers and spontaneous unaffiliated volunteers (SUVs) may be covered
- Covers volunteers of any agency, instrumentality or political subdivision of the Commonwealth
  - VDH is an agency of the Commonwealth

# Statutory Sovereign Immunity

## Virginia Volunteers Act

- Departments utilizing volunteers must develop written rules governing volunteer
  - Recruitment
  - Screening
  - Training
  - Responsibility
  - Utilization
  - Supervision



# Statutory Sovereign Immunity

## Virginia Volunteers Act

MRCs will have to be under the control and direction of VDH in order to avail themselves of the immunity offered in this act.



# Statutory Sovereign Immunity

## Contractual

- Available for volunteer fire-fighting and EMS companies or associations
  - EMS company is any volunteer EMS organization organized under the statute with the approval of the local governing body
  - It is not clear whether MRCs can be EMS companies





# Statutory Sovereign Immunity

## Contractual

- Any EMS company can contract with a county, city or town to provide emergency medical services
- A contract makes the EMS company an instrumentality of the governing body
- Instrumentalities are immune from suit for damages done incident to providing emergency medical services


# Sovereign Immunity

## Common Law

- A common law doctrine created to ensure the smooth operation of government
- The Commonwealth is immune from liability for harm caused by its agents and employees
- Agents and employees of the Commonwealth are eligible to share in this immunity for acts done in their capacity as agents and employees

# Sovereign Immunity

## The Protection Test

- (1) The nature of the function performed by the agent
  - (2) The extent of the state's interest and involvement in that function
  - (3) Whether the act involves the use of judgment and discretion
  - (4) The degree of control and direction exercised by the state over the employee
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# Sovereign Immunity

## The Bottom Line

- It is unclear whether MRC volunteers are agents of the Commonwealth who are eligible for sovereign immunity
- If the volunteers are eligible, it is not clear that their activities satisfy each of the four requirements of the test



# Title 44 Immunity Overview

- Only available during a declared emergency
- Two types of immunities
  - “Section A immunity” is for organizations and its volunteers
  - “Section C immunity” is for individuals
- Not sufficient to protect MRC volunteers





# Title 44

## Declared Emergencies

- Major Disaster
  - Declared by the President
- State of Emergency
  - Declared by the Governor
- Local Emergency
  - Declared by the local director of emergency management



# Title 44

## Disasters

- Major Disaster
  - Declared by the President
- Natural Disaster
  - Hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake, drought, fire or other natural catastrophe resulting in damage, hardship, suffering or possible loss of life
  - Not clear if communicable disease outbreaks fit under this definition
  - “Natural catastrophe”?

# Title 44

## Disasters

- Man-made Disaster
  - Attacks by enemies through the use of bombs, missiles, shell fire, nuclear, radiological, chemical or biological agents; terrorism; industrial, nuclear or transportation accidents, explosions, conflagrations, power failures, or resource shortages or other conditions such as sabotage or oil spills; and environmental contaminants that threaten or cause damage to property, human suffering, hardship or loss of life
  - It may take time to determine in a “bio” scenario

# Title 44

## Section A Immunity

- Focus is on public and private agencies
- Employees and representatives of the agencies also receive immunity
- Only applies when the agency or representative is engaged in “emergency services” activities in response to natural or man-made disasters



# Title 44

## Section A Immunity for MRC Volunteers

Agencies and volunteers must be engaged in providing fire-fighting, police, medical, health, rescue, engineering, warning, communications, radiological, chemical, evacuation, or emergency welfare services to prevent, minimize and repair injury and damage resulting from natural or man-made disasters.



# Title 44

## Section C Immunity

- Focus is on individuals who render aid during a declared disaster
- Aid must be rendered gratuitously
- Volunteer must be licensed, certified or permitted to perform the act necessary to render aid



# **Title 44**

## **The Bottom Line**

**TITLE 44 WILL PROVIDE IMMUNITY  
DURING A DECLARED EMERGENCY.**

**MANY OF THE ACTIVITIES IN WHICH  
MRCs PARTICIPATE WILL NOT BE  
DURING A DECLARED EMERGENCY;  
THEREFORE, TITLE 44 WILL NOT  
APPLY.**

# Workers' Compensation

- Generally, volunteer fire-fighters, lifesaving and rescue squad members are not covered by workers' compensation
- Political subdivisions can adopt resolutions to cover these volunteers



# Workers' Compensation

- Volunteer lifesaving or rescue squads can elect to be an employer in order to cover their volunteers
- It is not clear that MRCs fit the definition of volunteer lifesaving or rescue squads



# Workers' Compensation

- Volunteers who respond to a request of the Virginia Department of Emergency Management are covered





# Conclusion

- Complex patchwork of state and federal laws, and common law doctrines, that speak to liability of volunteers
  - Because of this complexity, there is not a simple, unified source of local authority and applications
  - Currently, there is NOT sufficient liability protection for volunteers.
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